



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 21, 2006
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

ANTITRUST DIVISION ENDS THE YEAR WITH SECOND-HIGHEST LEVEL OF CRIMINAL FINES, MORE MERGER CHALLENGES

WASHINGTON — In its fight against cartels and other anticompetitive conduct, in 2006 the Antitrust Division marked its second highest level of criminal fines obtained in Division history. The Division also experienced increases in merger filings and brought more merger challenges than the previous two years combined, the Department of Justice announced.

Further, the Division supported initiatives to improve the analysis of civil non-merger conduct, both in the United States and internationally, and participated in several U.S. Supreme Court cases important to the continuing refinement of the antitrust laws.

“The Division’s achievements reflect the hard work of its staff, who are committed to aggressive, yet balanced antitrust enforcement,” said Thomas O. Barnett, Assistant Attorney General in charge of the Department’s Antitrust Division. “Sound enforcement of the antitrust laws ensures that illegal conduct is stopped, procompetitive transactions can proceed, and businesses are able to engage in vigorous competition resulting in lower prices, better quality and more choices for consumers.”

Cartel Enforcement

Anticompetitive conduct by criminal cartels – such as price fixing, bid rigging, and procurement fraud – remains the highest enforcement priority of the Antitrust Division. For the fiscal year ending on Sept. 30, 2006, the Division obtained criminal fines totaling \$473,445,600, representing a 40 percent increase over FY 2005, and filed 33 criminal cases, many involving multiple defendants. (See chart.)

Fiscal Year 2006 yielded 5,383 jail days imposed for price fixing, bid rigging, obstruction, fraud and related anticompetitive conduct. And, as of Dec. 15, 2006, only a few months into FY 2007, the Division has already obtained sentences totaling 9,135 days of jail time.

The Division continues to investigate and prosecute the international cartel that fixed prices for high-tech dynamic random access memory (DRAM). Early in FY 2006, the Division obtained a \$300 million fine against Samsung Electronics Company and its U.S. subsidiary, Samsung Semiconductor Inc., the second largest criminal antitrust fine in U.S. history. Also in FY 2006, the Division obtained an \$84 million fine against

Japanese manufacturer Elpida Memory Inc., and secured guilty pleas from four executives of Hynix Semiconductor Inc. and four executives of Samsung Electronics Co. Ltd., both Korean manufacturers of DRAM. Over the full course of the investigation, this matter has yielded charges against four companies and 18 individuals, of whom 11 are foreign nationals who have served or agreed to serve time in U.S. prisons. The Division has obtained more than \$732 million in criminal fines and courts imposed 2,460 days of prison time for individuals as a result of this investigation.

In 2006, the Division continued to investigate price fixing in the ready-mixed concrete industry in the Midwest. In total, five companies and 10 executives have pleaded guilty to, or have been convicted of, conspiring to fix the price of ready-mixed concrete. The Division has obtained almost \$35 million in fines, including a \$29.2 million fine – the largest fine ever obtained in a domestic cartel investigation – against Irving Materials Inc., an Indiana ready-mixed concrete producer. Additionally, each of the six executives who have been sentenced will serve between five and 14 months of incarceration.

The Division obtained guilty pleas or convictions against price-fixing cartels and bid-rigging conspiracies in many other industries in 2006, including rubber chemicals, hydrogen peroxide and sodium perborates, gas pipeline construction, marine fenders supplied to the U.S. Navy and Coast Guard, and freight forwarding services offered to the U.S. military.

The Division continued its nationwide investigation of bid rigging and fraud in the E-Rate program, which Congress created to help needy schools and libraries connect to the Internet. In 2006, more than \$4 million in criminal fines and restitution were imposed as a result of this investigation. In total, the Division has charged 14 individuals and 12 companies in connection with schemes to defraud the E-Rate program and schools across the country. Defendants have been sentenced to 4,380 days in prison and have agreed to pay criminal fines and restitution totaling more than \$40 million.

Merger Enforcement

Merger and acquisition activity continued to increase in 2006 both in terms of transactions and enforcement activity. For the fiscal year ending September 2006, premerger transaction filings under the Hart-Scott-Rodino (HSR) Act increased 8.9 percent over FY 2005 to 1860, and parties notified an additional 458 transactions between Oct. 1 and Dec. 15. The Division initiated 10 merger enforcement actions, and an additional six transactions were restructured by the parties in response to a Division investigation. At the same time, the Division continued to improve its efficiency in the review of HSR transactions: the percentage of HSR transactions resulting in a second request dropped from 1.5 percent to 1 percent, and the duration of the average second request investigation continued to decline.

Merger Challenges

The Division obtained divestitures or other relief to prevent harm to competition in numerous industries. For example, just prior to trial, the Division obtained a settlement in its challenge to DFA's consummated acquisition of a partial ownership interest in Southern Belle. The settlement required DFA to divest all of its ownership interest in Southern Belle, protecting competition for school milk sales in a total of 100 school districts in Kentucky and Tennessee. The Division obtained a consent decree under which Mittal Steel Company N.V. will divest one of the three North American tin mills it will own as the result of acquiring Arcelor S.A. The divestiture agreement will preserve competition in the market for tin mill products, which are finely rolled steel sheets (normally coated with tin or chrome) used in many consumer-product applications. In connection with the media merger of The McClatchy Company and Knight-Ridder Inc., the Division obtained the divestiture of the St. Paul Pioneer Press, a Minneapolis/St. Paul newspaper, to preserve competition in the local market for readers and advertising. In another matter, the Division obtained a consent decree requiring Exelon Corporation and Public Service Enterprise Group Inc. to divest six electricity generating plants in order to preserve competition in the wholesale electricity market in the Mid-Atlantic region. In April, the Division obtained a settlement in which QUALCOMM Inc. and Flarion Inc. agreed to pay \$1.8 million in civil penalties for violating premerger waiting period requirements.

Guidelines Commentary and Merger Review Process Initiative

The improved merger review process is a direct result of the Division's focus on efficiency and transparency. In March, the Division and the Federal Trade Commission (FTC) released their joint Commentary on the Horizontal Merger Guidelines, illustrating how the agencies have applied the Guidelines' principles in the context of particular merger investigations. In December, the Division announced a revision to its Merger Review Process Initiative, which will help the Division employ investigative resources more effectively and further reduce the investigative burden placed on parties.

Civil Non-Merger Conduct

In addition to its cartel and merger priorities, the Division enforces the antitrust laws against civil non-merger conduct that harms competition, which may involve agreements or single-firm action. The Division was active in both areas in 2006.

U.S. v. National Association of Realtors

The Division's enforcement against anticompetitive agreements included its lawsuit against the National Association of Realtors (NAR). In September 2005, the Division filed suit after NAR promulgated rules that would limit competition from certain real estate brokers who use the Internet to serve their customers. In November 2006, the U.S. District Court in Chicago denied NAR's motion to dismiss. The case will now proceed to discovery.

ABA Consent Decree Violation

In June, the American Bar Association agreed to pay \$185,000 in fees and costs associated with the Division's investigation of its violation of a 1996 antitrust consent decree that prohibited the ABA from misusing its law school accreditation process. Such compliance actions underscore the seriousness with which the Division views any failure by a party to comply with decree obligations.

Single-Firm Conduct Hearings

In June, the Division and the FTC began a series of hearings on the antitrust implications of single-firm conduct under the antitrust laws. The hearings, which will continue in the first half of 2007, examine whether and when specific types of single-firm conduct may violate Section 2 of the Sherman Act. Topics to date have included predatory pricing, loyalty discounts, exclusive dealing, tying and bundling, and deceptive or misleading practices.

Competition Advocacy

Real Estate

The Division, together with the FTC, has been educating policymakers and the general public about the benefits of competition in the market for real estate brokerage services. The Division provides information to entities considering rules – such as rules that prohibit rebates to consumers or that undermine online brokerage models – that would inhibit some types of competition that can lower the cost of buying or selling a home. During 2006, several states modified proposed or existing laws and regulations to enhance competition to the benefit of consumers. Delaware, Ohio, Tennessee, and Wisconsin all passed bills that included a waiver provision to enable individual consumers to choose not to purchase unwanted types of real estate brokerage services. The West Virginia Real Estate Commission, the Tennessee Real Estate Commission, and the state of South Carolina all lifted bans on consumer rebates in real estate transactions. The result is that consumers in these states now have the potential to save thousands of dollars on the purchase of a home.

U.S. Supreme Court Advocacy

The U.S. Supreme Court has taken an active docket of antitrust and competition-related cases in the past year, and the Division has assisted the Solicitor General in submitting the views of the United States as *amicus curiae* (friend of the court). In 2006, the court issued decisions in *Texaco Inc. v. Dagher*, stating that “rule of reason” analysis generally governs pricing decisions by joint venturers; *Illinois Tool Works Inc. v. Independent Ink, Inc.*, holding that the mere fact that a tying product is patented does not support a presumption of market power for purposes of antitrust tying analysis; and *Volvo Trucks North America, Inc. v.*

Reeder-Simco GMC, Inc., clarifying the standards for secondary-line price discrimination claims under the Robinson-Patman Act. In each case, the Court reached the decision urged by the United States. Later in 2006, the Division assisted in briefs filed in *Weyerhaeuser Co. v. Ross Simmons Hardwood Lumber Co., Inc.*, regarding the standards governing buyer-side predatory pricing; *Bell Atlantic Corp. v. Twombly*, concerning pleading standards for antitrust civil conspiracy claims; and *Credit Suisse First Boston Ltd. v. Billing*, which will consider the test for implied immunity from the antitrust laws based on the operation of securities regulations and statutes. The latter three cases remain under review by the Court.

Economics

The Division's Economic Analysis Group (EAG) consists of more than 50 economists, almost all of whom have doctorates and advanced training in industrial organization, and a smaller number of financial analysts. In addition to participating in each of the Division's enforcement matters, particularly in analyzing the effects of mergers, EAG staff engages in extensive research and writing to advance the state of the art in antitrust economics. In fiscal year 2006, EAG staff published 30 papers in antitrust and other academic journals, and posted 23 papers to its public discussion paper series during the same period.

International

The Division remains active on the international front. In 2006, Assistant Attorney General Barnett chaired the Organization for Economic Cooperation and Development (OECD) Competition Committee Working Party on International Cooperation & Enforcement, where, among other work, he led discussions on cartel enforcement and unilateral conduct issues. The Division was heavily involved in the Unilateral Conduct Working Group of the International Competition Network (ICN), which announced plans to focus on the objectives of single-firm enforcement and the standards for analysis of dominance (monopolization). The Division attended numerous meetings with the antitrust agencies of United States trading partners, and the U.S., Canadian, and Mexican agencies created working groups on unilateral conduct and intellectual property issues. The Division, together with the FTC, also met several times with officials from China regarding that nation's proposed Antimonopoly Law. The Division will continue to promote sound antitrust analysis and international cooperation abroad.

Conclusion

The Antitrust Division will continue its mission to protect consumer welfare by aggressively prosecuting those who engage in illegal criminal antitrust behavior, conducting thorough and efficient investigations of proposed mergers and civil non-merger matters, and promoting effective enforcement of the antitrust laws in the U.S. and abroad.

###